IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6167 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHANRAJ MISHRIMAL SINGHI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 6167 of 2004

MR PK JANI for Petitioner No. 1

MR AY KOGJE, APP for Respondent No. 1

MR RAJENDRA K GOLANI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 22/09/2004

ORAL JUDGEMENT

1. Rule. Ld. APP Mr. AY Kogje appears and waives formal service of Rule for respondent No.1 State and ld. counsel Mr. Rajendra K Golani appears and waives service of Rule for respondent No.2. On consent, the Rule is fixed forthwith.

2. Mr. Rajendra K.Golani, ld. counsel appearing for respondent No.2 -original complainant has tendered affidavit-in-reply on behalf of respondent No.2 which is taken on record.

3. It is submitted by ld. counsel Mr. PK Jani for the applicant -original accused No.7 that criminal complaint filed against the present applicant requires to be quashed because at the relevant time i.e. date of issuance of cheque in question, the applicant was no more a Director of the Company responsible in discharge of day to day affairs of the company and was liable to pay any amount to respondent No.2 -original complainant. In support of his say, the applicant has produced zerox copy of the certified copy of Form No.32 issued by the Registrar of Companies which reveals that the applicant has resigned as Director in the month of August,1996 and Registrar was also informed accordingly on 15.1.1999. Undisputedly, the cheque in question referred to by the complainant in the present complaint is of the year 2002 and the complaint is filed in the year 2002. In all Eleven (11) such cheques were issued by the Company and total 11 criminal complaints have been filed against the company and its director wherein the present applicant is joined as accused No.7 in the capacity of a Director of the company. In view of above position, considering the scheme of Sec.138, 139 & 141 of the Negotiable Instruments Act, the criminal complaint filed against the present applicant -accused no.7 requires to be quashed and set aside and consequently, the process issued against the applicant also requires to be quashed.

4. The resistance put forward on behalf of the respondents is not well-founded. However, the submission of ld. counsel Mr. Golani for respondent No.2 is justified that at least the trial Court ought to have proceeded against other accused persons since the trial is pending since the year 2002. He has further submitted that when this Court now is disposing of this matter, trial Court should be directed to dispose of the criminal complaint expeditiously and preferably within six months from today.

5. For the reasons aforesaid, present Cri. Misc. Application is allowed. Criminal Complaint No. 1704/2002 filed by respondent No.2 and pending before the learned

Chief Judicial Magistrate, Vadodara is hereby quashed and set aside so far as the present applicant -original accused No.7 is concerned. Consequently, the process issued against the present applicant accused no.7 by the ld. CJM in the aforesaid criminal complaint is also quashed and set aside. Ld. Chief Judicial Magistrate, Vadodara is directed to hear and dispose of Criminal Complaint No.1704/2002 against other accused persons as expeditiously as possible and preferably within One Year from today.

6. Rule is made absolute subject to the aforesaid directions and observations.

[C.K. BUCH, J]

*rawal